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European Anti-Money Laundering Authority (AMLA)
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Submitted via email

Re: AMLA Public Consultation on the draft RTS on Customer Due Diligence under Article 28(1) AMLR

As the trade association representing the global asset management industry, the Investment Company Institute (ICI)[1] welcomes AMLA's efforts to clarify how collective investment undertakings (CIUs) may meet customer due diligence (CDD) obligations when shares or units are distributed through intermediaries, including in cross border contexts. Clear and workable rules are essential to ensure consistent implementation of the EU AML framework and to support effective mitigation of money laundering and terrorist financing (ML/TF) risks across the Union.

At a general level, certain elements of Article 17 raise concerns regarding proportionality and operational feasibility, including expectations around the assessment of third country AML/CFT frameworks and supervision, as well as the practical ability for CIUs to secure underlying investor information in intermediated distribution models. These issues warrant careful consideration to ensure that the RTS remain firmly anchored in the risk-based approach established at Level 1.

Our principal concern, however, relates to Article 17(c) and its implications for the distribution of EU domiciled funds in third countries, particularly where regulated intermediaries and transfer agents sit between the CIU and the end investor.

In this context, it is important to recognise the role that EU funds, and UCITS in particular, play in the EU's broader investment ecosystem. UCITS are a well-established and trusted global product, distributed to millions of investors outside the EU who invest in EU domiciled funds. This channel represents a significant source of third country capital invested into EU markets and the EU real economy, aligning directly with the EU's economic growth objectives. Regulatory outcomes that make third country distribution materially more difficult weaken the international competitiveness of EU funds, risk undermining UCITS' position as a global

[1] The Investment Company Institute (ICI) is the leading association representing the global asset management industry in service of individual investors. ICI members are located in Europe, North America and Asia and manage fund assets of €46.0 trillion, including UCITS, mutual funds, exchange-traded funds (ETFs), closed-end funds, unit investment trusts (UITs) and similar funds in these different jurisdictions. ICI has offices in Brussels, London, and Washington, DC.

reference standard, and undermine efforts to attract third country capital into the EU at a time when this is a core EU priority.

Maintaining Article 17(c) as currently proposed also risks undermining the continued use of UCITS for distribution outside the EU by global asset managers. In third-country markets where certain investor categories are assessed as higher risk or where legal and operational constraints make look-through difficult or disproportionate, CIUs may face materially higher costs or be forced to reconsider EU-domiciled structures altogether. In markets where the use of a European fund vehicle is not essential, these cost and feasibility considerations will directly influence product structuring decisions. Over time, this would erode the attractiveness of UCITS as a global distribution platform, weakening a well-established and respected EU brand.

Article 17(c) and the risk of systematic look through

Recital 14 makes clear that, to ensure proportionality and a risk-based application of CDD obligations, CIUs "do not need to obtain information on the identity of the underlying investor in all cases and in a systematic manner." Decisions on whether and to what extent underlying investor information should be obtained are intended to be driven by the specific ML/TF risks to be mitigated.

As currently drafted, however, Article 17(c) risks cutting across this principle. By conditioning reliance on an intermediary on the relationship being assessed as "low or standard risk," the provision risks turning risk categorisation into a structural gatekeeper for reliance. In practice, this may create a default or systematic expectation of look through whenever an intermediary is assessed above "standard risk," irrespective of whether the underlying ML/TF risks are otherwise effectively mitigated.

This concern is compounded by the fact that intermediary risk classifications are inherently firm specific, reflecting differences in risk appetite, internal methodologies, and supervisory expectations. The current drafting of Article 17(c) implicitly assumes a level of consistency and comparability in risk scoring across entities that does not exist in practice. As a result, the same intermediary relationship may be classified as "standard risk" by one CIU and as higher risk by another, leading to uneven application, legal uncertainty, and unintended systematic look through outcomes that are driven more by methodological variation than by underlying ML/TF risk.

This dynamic is particularly acute in cross border distribution. Intermediary risk assessments are frequently influenced by geographical or contextual factors rather than by deficiencies in an intermediary's AML/CFT controls, governance, or supervisory environment. As a result, intermediaries in third countries may be assessed above "standard risk" despite operating under robust and internationally aligned AML/CFT regimes. Where such an assessment effectively removes the possibility of reliance, CIUs may be driven toward routine or systematic look through simply to preserve regulatory compliance, even in the absence of specific ML/TF concerns.

Such an outcome is difficult to reconcile with Recital 14's explicit rejection of systematic look through and with the Level 1 intention that reliance on intermediaries remains viable where risks are appropriately addressed. Over time, the practical starting point may move from risk-based reliance to conditional permission, with look-through becoming the norm rather than the exception.

Operational implications and misalignment with fund distribution models

CIUs commonly distribute through regulated intermediaries and appointed transfer agents and often do not maintain direct legal or operational relationships with end investors. In many fund distribution models, distributor onboarding and monitoring, investor record keeping, and customer due diligence are carried out by different obliged entities within an operating framework, most commonly involving appointed transfer agents. These functions are distinct but interdependent, and CIUs typically have limited ability to impose uniform risk classifications, data access rights, or information sharing arrangements across all parties involved.

A framework in which an assessment above "standard risk" mechanically triggers look through expectations does not reflect these operating realities. Implementing such expectations would require material changes to delegation arrangements, contractual frameworks, systems, and data flows, including enhanced alignment of risk rating methodologies between distributors and transfer agents, often where CIUs have limited access to or control over end investor information. This would entail significant cost and complexity, with limited incremental ML/TF risk reduction value.

Absent clarification, Article 17(c) also risks giving rise to unintended consequences, including incentives to recalibrate internal risk classifications to preserve workable operating models or to reconsider distribution in certain markets where look through cannot be implemented proportionately. In extreme cases, CIUs may be compelled to withdraw from certain intermediary relationships or markets altogether, leading to de risking outcomes that do not address identifiable ML/TF vulnerabilities. These dynamics could restrict third country access to EU domiciled funds without delivering commensurate supervisory benefits.

Clarification critical to preserving the Level 1 approach

To ensure consistency with Recital 14 and the Level 1 risk-based framework, AMLA should clarify Article 17(c) so that reliance on intermediaries is assessed by reference to the effectiveness of risk mitigation, rather than rigid or outcome determinative risk labels. Clarification is needed to confirm that an assessment above "standard risk" does not, in itself, preclude reliance where ML/TF risks are effectively mitigated, and that geographical or third country factors alone should not result in default or systematic expectations of underlying investor look through in the absence of specific risk indicators.

Such targeted clarification would preserve the intended operation of the Level 1 reliance framework and support proportionate, risk-based supervision, while avoiding unnecessary disruption and safeguarding the global competitiveness of EU domiciled funds.